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4 Securities and Exchange Commission

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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11

12
13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 JOHNNY TSENG (a/k/a Kuanhao J.
18 Tseng, Kuanhao Tseng), KEVIN
19 ZHANG (a/k/a Kevin Huapeng Zhang,
20 Huapeng Zhang), and
SUMMITCREST CAPITAL, INC.,

21 Defendants.
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Case No.

**CONSENT OF DEFENDANT
JOHNNY TSENG**

1 1. Defendant Johnny Tseng, a/k/a Kuanhao J. Tseng, Kuanhao Tseng
2 ("Defendant") waives service of a summons and the complaint in this action, enters a
3 general appearance, and admits the Court's jurisdiction over Defendant and over the
4 subject matter of this action.

5 2. Without admitting or denying the allegations of the complaint (except as
6 provided herein in paragraph 12 and except as to personal and subject matter
7 jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the
8 Final Judgment in the form attached hereto (the "Final Judgment") and incorporated
9 by reference herein, which, among other things:

- 10 (a) permanently restrains and enjoins Defendant from violation of
11 Section 5 of the Securities Act of 1933 (the "Securities Act") [15
12 U.S.C. § 77e]; Section 17(a) of the Securities Act [15 U.S.C. §
13 77q(a)]; and Section 10(b) of the Securities Exchange Act of 1934
14 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5
15 promulgated thereunder [17 C.F.R. § 240.10b-5];
- 16 (b) permanently restrains and enjoins Defendant from, directly or
17 indirectly, including, but not limited to, through any entity owned
18 or controlled by Defendant, participating in the issuance,
19 purchase, offer, or sale of any security; provided, however, that
20 such injunction shall not prevent Defendant from purchasing or
21 selling securities for his own personal account, pursuant to Section
22 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)];
- 23 (c) prohibits Defendant from acting as an officer or director of any
24 issuer that has a class of securities registered pursuant to Section
25 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file
26 reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C.
27 § 78o(d)];
- 28

- (d) orders Defendant to pay disgorgement in the amount of \$16,600,000.00, plus prejudgment interest thereon in the amount of \$4,349,481.52, on a joint and several basis, and disgorgement in the amount of \$60,000.00, plus prejudgment interest thereon in the amount of \$15,721.03, on an individual basis, pursuant to Sections 21(d)(5) and 21(d)(7) of the Exchange Act [15 U.S.C. § 78u(d)(5) and 15 U.S.C. § 78u(d)(7)]; and
- (e) orders Defendant to pay a civil penalty in the amount of \$414,366.00 under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

3. Defendant acknowledges that the civil penalty paid pursuant to the Final Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant agrees that he shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this action. For purposes of this paragraph, a "Related Investor Action" means a

1 private damages action brought against Defendant by or on behalf of one or more
2 investors based on substantially the same facts as alleged in the Complaint in this
3 action.

4 4. Defendant agrees that he shall not seek or accept, directly or indirectly,
5 reimbursement or indemnification from any source, including but not limited to
6 payment made pursuant to any insurance policy, with regard to any civil penalty
7 amounts that Defendant pays pursuant to the Final Judgment, regardless of whether
8 such penalty amounts or any part thereof are added to a distribution fund or otherwise
9 used for the benefit of investors. Defendant further agrees that he shall not claim,
10 assert, or apply for a tax deduction or tax credit with regard to any federal, state, or
11 local tax for any penalty amounts that Defendant pays pursuant to the Final
12 Judgment, regardless of whether such penalty amounts or any part thereof are added
13 to a distribution fund or otherwise used for the benefit of investors.

14 5. Defendant waives the entry of findings of fact and conclusions of law
15 pursuant to Rule 52 of the Federal Rules of Civil Procedure.

16 6. Defendant waives the right, if any, to a jury trial and to appeal from the
17 entry of the Final Judgment.

18 7. Defendant enters into this Consent voluntarily and represents that no
19 threats, offers, promises, or inducements of any kind have been made by the
20 Commission or any member, officer, employee, agent, or representative of the
21 Commission to induce Defendant to enter into this Consent.

22 8. Defendant agrees that this Consent shall be incorporated into the Final
23 Judgment with the same force and effect as if fully set forth therein.

24 9. Defendant will not oppose the enforcement of the Final Judgment on the
25 ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of
26 Civil Procedure, and hereby waives any objection based thereon.

1 10. Defendant waives service of the Final Judgment and agrees that entry of
2 the Final Judgment by the Court and filing with the Clerk of the Court will constitute
3 notice to Defendant of its terms and conditions. Defendant further agrees to provide
4 counsel for the Commission, within thirty days after the Final Judgment is filed with
5 the Clerk of the Court, with an affidavit or declaration stating that Defendant has
6 received and read a copy of the Final Judgment.

7 11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims
8 asserted against Defendant in this civil proceeding. Defendant acknowledges that no
9 promise or representation has been made by the Commission or any member, officer,
10 employee, agent, or representative of the Commission with regard to any criminal
11 liability that may have arisen or may arise from the facts underlying this action or
12 immunity from any such criminal liability. Defendant waives any claim of Double
13 Jeopardy based upon the settlement of this proceeding, including the imposition of
14 any remedy or civil penalty herein. Defendant further acknowledges that the Court's
15 entry of a permanent injunction may have collateral consequences under federal or
16 state law and the rules and regulations of self-regulatory organizations, licensing
17 boards, and other regulatory organizations. Such collateral consequences include, but
18 are not limited to, a statutory disqualification with respect to membership or
19 participation in, or association with a member of, a self-regulatory organization. This
20 statutory disqualification has consequences that are separate from any sanction
21 imposed in an administrative proceeding. In addition, in any disciplinary proceeding
22 before the Commission based on the entry of the injunction in this action, Defendant
23 understands that he shall not be permitted to contest the factual allegations of the
24 complaint in this action.

25 12. Defendant understands and agrees to comply with the terms of 17 C.F.R.
26 § 202.5(e), which provides in part that it is the Commission's policy "not to permit a
27 defendant or respondent to consent to a judgment or order that imposes a sanction
28 while denying the allegations in the complaint or order for proceedings," and "a

1 refusal to admit the allegations is equivalent to a denial, unless the defendant or
2 respondent states that he neither admits nor denies the allegations.” As part of
3 Defendant’s agreement to comply with the terms of Section 202.5(e), Defendant: (i)
4 will not take any action or make or permit to be made any public statement denying,
5 directly or indirectly, any allegation in the complaint or creating the impression that
6 the complaint is without factual basis; (ii) will not make or permit to be made any
7 public statement to the effect that Defendant does not admit the allegations of the
8 complaint, or that this Consent contains no admission of the allegations, without also
9 stating that Defendant does not deny the allegations; (iii) upon the filing of this
10 Consent, Defendant hereby withdraws any papers filed in this action to the extent that
11 they deny any allegation in the complaint; and (iv) stipulates solely for purposes of
12 exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C.
13 §523, that the allegations in the complaint are true, and further, that any debt for
14 disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant
15 under the Final Judgment or any other judgment, order, consent order, decree or
16 settlement agreement entered in connection with this proceeding, is a debt for the
17 violation by Defendant of the federal securities laws or any regulation or order issued
18 under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C.
19 §523(a)(19). If Defendant breaches this agreement, the Commission may petition the
20 Court to vacate the Final Judgment and restore this action to its active docket.
21 Nothing in this paragraph affects Defendant’s: (i) testimonial obligations; or (ii) right
22 to take legal or factual positions in litigation or other legal proceedings in which the
23 Commission is not a party.

24 13. Defendant hereby waives any rights under the Equal Access to Justice
25 Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other
26 provision of law to seek from the United States, or any agency, or any official of the
27 United States acting in his or her official capacity, directly or indirectly,
28 reimbursement of attorney’s fees or other fees, expenses, or costs expended by

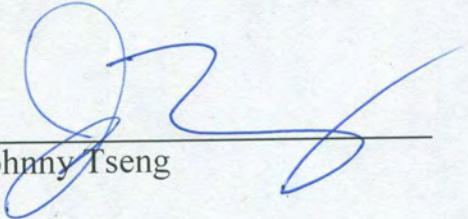
1 Defendant to defend against this action. For these purposes, Defendant agrees that
2 Defendant is not the prevailing party in this action since the parties have reached a
3 good faith settlement.

4 14. In connection with this action and any related judicial or administrative
5 proceeding or investigation commenced by the Commission or to which the
6 Commission is a party, Defendant (i) agrees to appear and be interviewed by
7 Commission staff at such times and places as the staff requests upon reasonable
8 notice; (ii) will accept service by mail or facsimile transmission of notices or
9 subpoenas issued by the Commission for documents or testimony at depositions,
10 hearings, or trials, or in connection with any related investigation by Commission
11 staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of
12 such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives
13 the territorial limits on service contained in Rule 45 of the Federal Rules of Civil
14 Procedure and any applicable local rules, provided that the party requesting the
15 testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-
16 prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction
17 over Defendant in any United States District Court for purposes of enforcing any
18 such subpoena.

19 15. Defendant agrees that the Commission may present the Final Judgment
20 to the Court for signature and entry without further notice.

1 16. Defendant agrees that this Court shall retain jurisdiction over this matter
2 for the purpose of enforcing the terms of the Final Judgment.

3
4
5 Dated: 7/17/2023


Johnny Tseng

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8
9 On _____, 202__, _____, a person known to
10 me, personally appeared before me and acknowledged executing the foregoing
11 Consent.

12
13
14 see Attached Acknowledgment
Notary Public
15 Commission expires:

16
17 Approved as to form:

18 
19 _____
20 Andrew B. Holmes
21 Holmes, Athey, Cowan & Mermelstein LLP
22 811 Wilshire Boulevard, Suite 1460
23 Los Angeles, California 90017
24 Tel: (213) 985-2200
25 Email: abholmes@holmesathey.com

26
27 Attorney for Defendant Johnny Tseng
28

California All-Purpose Certificate of Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

} s.s.

On July 17, 2023 before me, SARAH J. WALDRIP, Notary Public,
Name of Notary Public, Titlepersonally appeared Johnny Tseng
Name of Signer (1)

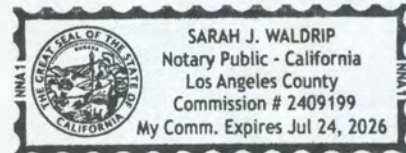
Name of Signer (2)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Sarah J. Waldrip
Signature of Notary Public



Seal

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of Consent of

Defendant Johnny Tseng

containing 8 pages, and dated July 17, 2023

including Acknowledgment

The signer(s) capacity or authority is/are as:

- ☒ Individual(s)
☐ Attorney-in-fact
☐ Corporate Officer(s) _____
 Title(s)

- ☐ Guardian/Conservator
☐ Partner - Limited/General
☐ Trustee(s)
☐ Other: _____

representing: _____
 Name(s) of Person(s) Entity(ies) Signer is Representing

Additional Information**Method of Signer Identification**

Proved to me on the basis of satisfactory evidence:

- ☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:

Page # _____ Entry # _____

Notary contact: _____

Other

- ☐ Additional Signer ☐ Signer(s) Thumbprints(s)

☐ _____